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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,948	09/08/2003	Kailash C. Vasudeva	PAT 51403A-2	9002

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CANADA

EXAMINER
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RODRIGUEZ, RUTH C

ART UNIT	PAPER NUMBER
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3677

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/656,948	Applicant(s) VASUDEVA, KAILASH C.	
	Examiner Ruth C. Rodriguez	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 72-90 is/are pending in the application.
- 4a) Of the above claim(s) 76-82 and 88-90 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 72-75 and 83-87 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 December 2006 has been entered.

### ***Election Restriction***

2. Claims 76-82 and 88-90 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 25 April 2004.

### ***Information Disclosure Statement***

3. The information disclosure statement filed 22 December 2005 has been considered for this Office Action.

### ***Claim Objections***

4. Claims 72-75 and 83 are objected to because of the following informalities:

- Claim 72 recites the limitations "the first part" and "the second part" in the third and sixth lines. There is insufficient antecedent basis for this limitation in the claim.
- Claim 73 recites the limitation "the second part" in the first line and "the first part" in the second line.
- Claim 74 recites the limitation "the first part" in the second line.
- Claim 75 recites the limitations "the first and the second parts" in the first line and "the first part" and "the second part" in the second line.
- Claim 83 recites the limitations "the first part" in the first line and "the second part" between the first and second lines.

Correction is required.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 72-75 and 83-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (US 6,299,216) in view of Medvick (US 4,792,162).

Thompson discloses a substantially flat two-part exhaust flange comprises a first substantially flat part (5a or 5b) and a second annular sealing part fitting (9,15,18). The first part has a pipe attachment means (outer surface of the flange 5a or 5b). The second annular sealing part fits the first substantially flat part (Figs. 4, 5, 6A, 6b, 7 and 11). The sealing surface has a sealing surface opposite to the pipe attachment means (Figs. 4, 5, 6A, 6b, 7 and 11). The sealing surface defines a protrusion or a cavity (Figs. 4, 5, 6A, 6b, 7 and 11). Thompson fails to disclose that at least one of the first substantially flat part or second annular sealing part is made of powder metallurgically produced material. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have at least one of the least one of the first substantially flat part or second annular sealing part manufactured of sintered powdered metal since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Especially, since Medvick teaches that the flanges are manufactured of sintered powdered metal that offers significant reduction in the manufacturing costs and provides a durable structure (C. 7, L. 25-31).

Thompson also discloses that:

- The second annular sealing part fits into a recess of the first substantially flat part (Figs. 4, 5, 6A, 6B, 7 and 11).

- The recess extends through the first substantially flat part (Figs. 4, 5, 6A, 6B, 7 and 11).
- The first substantially flat part and the second annular sealing part are stepped (steps at inner surface of 5a or 5b and steps at gasket 18a or 18b). The shoulder of the first substantially flat part is arranged to abut the second annular sealing part within the recess (Figs. 6B).
- An exhaust flange assembly comprises a flat two-part first flange having the features mentioned above in combination with a second flange (other of 5A or 5B). The second flange has a sealing surface of a shape complementary to the sealing surface of the second annular sealing part (Figs. 4, 5, 6A, 6B, 7 and 11).
- The exhaust flange further comprises an annular gasket recess (recess formed on 18a or 18b) arranged on the sealing surfaces.
- The exhaust flange further comprises gasket protrusions (any of the protruding surfaces of 18a or 18b).
- The gasket recess is generally oval (Figs. 4, 5, 6A, 6B, 7 and 11).

Regarding claim 83, a comparison of the recited process with the prior art does NOT serve to resolve the issue concerning patentability of the product. In *re Fessman*, 489 F2d 742, 180 U.S.P.Q. 326 (CCPA 1974). Whether the product is patentable depends on whether it is known in the art or it is obvious and is not governed by whether the process by which it is made is patentable. In *re Klug*, 333 F2d 905 142 U.S.P.Q. 161 (CCPA 1964). In an *ex parte* case, product-by-process claim are not

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construed as being limited to the product formed by the specific process recited. In re Hirao et al. 535 F2d 67, 190 U.S.P.Q. 15, (CCPA 1976).

### ***Response to Arguments***

7. Applicant's arguments filed 15 December 2006 have been fully considered but they are not persuasive.

8. The argument presented by the Applicant is that the newly submitted claims are patentable because the second part functions as a simple sealing means between two ends of pipe lengths and the claimed invention requires a second annular sealing part having a sealing surface defining a protrusion or a cavity. The Examiner fails to be persuaded by this argument because the second annular sealing part disclosed by Thompson has a protrusion (extending outwardly of the first substantially flat part) or a cavity (used to secure the second annular sealing part with respect to the first substantially flat part as shown in Figures 6B). Therefore, Thompson does meet this claim limitation.

9. The Applicant also argues that the claimed invention is directed to the embodiment shown in Figures 45 and 46. This argument fails to persuade because the Applicant did not elect this embodiment. The Applicant elected invention 2, species 1 and sub-species 2 (Figs. 35 and 36) on the reply made on 25 April 2004. Therefore, the embodiment being examined is the embodiment shown in Figs. 35 and 36.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zimmer et al. (US 3,173,522), Metwick (US 4,792,162) and Kapgan et al. (US 5,662,362) are cited to show state of the art with respect to the use of powder metallurgically produced material for the flanges and different components of a joint. Van Winkle (US 3,220,246), Ahlstone (US 4,294,477), Hodonsky (US 5,662,361), Metsinger (US 6,079,752), Babuder et al. (US 6,234,545 B1), Thompson (US 6,299,216 B1) and Aaron, III (US 6,454,316 B1 and 6,543,120 B2) are cited to show state of the art with respect to flanges having some of the features being claimed by the current application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

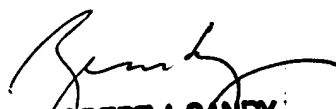


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth C. Rodriguez  
Patent Examiner  
Art Unit 3677

rcr  
January 22, 2007

  
**ROBERT J. SANDY**  
**PRIMARY EXAMINER**